

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, * CRIMINAL NO. 1:17-cr-10305-ADB-1
Plaintiff *
v. * BOSTON, MASSACHUSETTS
* APRIL 3, 2018
*
JOSEPH BAPTISTE, *
Defendant *
* * * * *

TRANSCRIPT OF FINAL STATUS CONFERENCE
BEFORE THE HONORABLE M. PAGE KELLEY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: UNITED STATES ATTORNEY'S OFFICE
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Court Reporter:

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 COURT CALLED INTO SESSION

2 (10:05:04 A.M.)

3 THE CLERK: ... -18, and we're on the record in
4 Criminal Case No. 17-10305, the United States of America
5 versus Joseph Baptiste, the Honorable M. Page Kelley
6 presiding.

7 Would counsel please identify themselves for the
8 record?

9 MR. FRANK: Stephen Frank for the United States.
10 Good morning, Your Honor.

11 THE COURT: Good morning, Mr. Frank.

12 MR. LaROCHE: Good morning, Your Honor. Donald
13 LaRoche on behalf of Joe Baptiste.

14 THE COURT: Okay. Good morning.

15 MR. LaROCHE: Good morning.

16 THE COURT: So this is the final status, and how
17 are we doing?

18 MR. FRANK: Well, Your Honor, I was disappointed
19 to learn right before Your Honor came into the courtroom
20 that Mr. LaRoche still says he's unable to open the video
21 and audio files being produced to him now, another time, on
22 a different media. We've tested it before we sent it out.
23 Mr. LaRoche is the only attorney in any of our cases who's
24 unable to open the discovery. And despite having had that
25 discovery now for about a month, at least, he has only

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1 notified me just now that he's unable to open it.

2 I have very serious concerns about this, Your
3 Honor. This case was indicted last summer. I'm not
4 accusing anyone of anything, but this is a very long time to
5 claim that you're unable to access the critical discovery in
6 this case.

7 This was a defendant who had agreed to plead
8 guilty, signed a plea agreement, signed a sworn statement of
9 facts. This is a case that should be resolved by now; and
10 instead, we are roughly eight or nine months from the time
11 of indictment, and defense counsel is still claiming he
12 can't open the discovery despite all of our best efforts.

13 My co-counsel has gone upstairs to try and locate
14 a paralegal to try and sit with Mr. LaRoche and show him the
15 discovery.

16 But I don't know that we can continue on this case
17 with a counsel who doesn't look at the discovery until the
18 day of the status conference and then claims he can't access
19 it. We need to be able to proceed in this case like every
20 other case. And we think that this should be the final
21 status conference, and the case should be moved up to the
22 District Court. And if counsel still claims he's unable to
23 access the discovery, then we need to find counsel for the
24 defendant who can.

25 THE COURT: Okay. Yes?

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1 MR. LaROCHE: Good morning, Your Honor. Contrary
2 to everything Mr. Frank just said, I did not just come in
3 here right now and say I can't open the discovery. I've
4 actually been contact with USA deLlano who is aware of this.

5 They send me this second set of --

6 The first set they sent was on a CD drive where
7 now they send me this thumb drive, and I have to contact
8 them to even get into it. So they didn't send any
9 information as to how do I get into it; I have to contact
10 them.

11 I contact AUSA deLlano. I explain to him that,
12 hey, I still can't get in here. He then tells me, okay,
13 well, I'll try to set something up with the paralegal that
14 had encrypted all the things in here.

15 I have my laptop here with me, as well. I have
16 their thumb drive with me. I've had all kinds of -- I've
17 made all kinds of efforts for the last three months. I've
18 had specialists open the CDs and say there's nothing on
19 there, to have them put it on the thumb drive.

20 March 5 they sent me the thumb drive. They tell
21 me, hey, you've got to call us to open this up. I do
22 exactly that. I emailed AUSA deLlano, because I understand
23 AUSA Frank was on trial, so I emailed AUSA deLlano. The
24 email kept bouncing back to me. I finally reach him on the
25 phone and I say, hey, listen, I need the password to get

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1 into your special thumb drive here. He gives me the
2 password. I'm on the phone, and he was busy. He said hold
3 on, I'm going to have to have a paralegal go through this
4 with you, because they're the ones that put this all
5 together.

6 So now again, like I say, I come with all my
7 equipment ready to go to see how I can get into this. The
8 only thing I'm going to printout is some documents, but
9 there's video, and there's telephone calls. Nothing.
10 Nothing can open up. At one point --

11 And Your Honor, I just say I was a little nervous,
12 because then I'm dealing with the FBI. Maybe they're doing
13 something that they're putting onto my computer. And I
14 asked Attorney deLlano. I said make sure that this stuff
15 I'm downloading, it doesn't crash my computer, please. And
16 he said, no, we'll have to have one of the paralegals
17 explain to you what's going on.

18 So if they can do it for me today, I can report to
19 the Court that we're ready to go.

20 There's matters that I believe should be
21 suppressed, can't prepare for a suppression hearing without
22 knowing what's on this little thumb drive.

23 So again, contrary to what AUSA Frank is
24 representing, I'm not doing this to be difficult; I'm just
25 trying to see the evidence that, like they say, they have

1 against my client.

2 THE COURT: Okay. So let's come back at three
3 o'clock. In the meantime, let's see if you can meet with
4 the Government and take a look at everything. And if you
5 want to come back sooner, that's fine. Just let me know
6 you're ready to come back.

7 MR. FRANK: I will do that, Your Honor. You know,
8 I have a busy schedule today. I just found out moments ago
9 that counsel came with his laptop and wants to have somebody
10 show him how to use it, so we are locating a paralegal. I'm
11 not going to be able to sit with him. I have other
12 engagements today. But we will find somebody to sit with
13 him, and we will be back later today.

14 THE COURT: Okay.

15 MR. LaROCHE: And, Your Honor, the only thing I
16 would say is that I was on my way to go see --

17 My father's broken his hip, and I was on my way to
18 go see him at the hospital at the rehab. But I will stick
19 around just to deal with this to get this squared away,
20 because I don't want to hold up anybody, especially AUSA
21 Frank.

22 THE COURT: Okay. And after you sit down with
23 someone in the Government's office, if you want to come back
24 before three, just let me know. And if you want to send
25 someone just to stand in for you, that's fine.

1 MR. FRANK: Thank you, Your Honor.

2 THE COURT: And I'm guessing you'll get on, you'll
3 see what you need to do, and then I'll give you another
4 brief date for a final.

5 But I want to make sure today all this is ironed
6 out and you're able to access it, and then we'll move
7 forward from there.

8 MR. FRANK: Thank you, Your Honor.

9 THE COURT: Okay. We'll see you all later.

10 (Court recessed from 10:16:02 a.m. to 2:22:43 p.m.)

11 AFTER RECESS

12 THE CLERK: Today is Tuesday, April 3, 2018, and
13 we're on the record in Criminal Case No. 17-10305, United
14 States of America versus Joseph Baptiste, the Honorable M.
15 Page Kelley presiding.

16 Will counsel please identify themselves for the
17 record?

18 MR. FRANK: Stephen Frank for the United States.
19 Good afternoon again, Your Honor.

20 THE COURT: Good afternoon.

21 MR. LaROCHE: Good afternoon again, Your Honor.
22 Donald LaRoche on behalf of Joseph Baptiste.

23 THE COURT: Okay. So what progress did we make?

24 MR. FRANK: The defendant, Your Honor, now has a
25 working set of all the discovery on his computer. It was

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1 always there, but he can't find it. It was unzipped 10
2 times and stored in a location on his computer where he
3 couldn't find it. We dug into his computer. We found it
4 for him. We've established a shortcut on his desktop so
5 that it's available to him.

6 There were two of the files that were video files
7 that were not working. We have re-imported those. We saved
8 them on new disks, re-imported them onto his computer.
9 They're there now.

10 They're still not working. There appears to be a
11 --

12 They won't play on his computer. That appears to
13 be a memory issue or some issue with his desktop, because
14 they work on our computers. He said that he will go and
15 deal with that somehow. But he's welcome to review those
16 videos in our office if he wants to.

17 There's also audio on his computer, so everything
18 is there if he wants it. And all of the other files are
19 open and working on his computer.

20 THE COURT: So the ones that are not working on
21 his computer you have on a disk.

22 MR. FRANK: He has them on a disk.

23 THE COURT: Oh, good. Okay.

24 MR. FRANK: With a self-executing file -- software
25 on there so that he can play them on a different computer.

1 THE COURT: So you could find a computer and stick
2 them in and watch. Okay.

3 MR. LaROCHE: Contrary to what Mr. Frank is
4 saying, it took four employees upstairs, absent of Mr.
5 Frank, to be able to help me to find what they claim should
6 have been there all the time. It took four of them to
7 figure that out.

8 And so now what I'll do is I'll be able to go back
9 and play that, and with -- the paralegal was kind enough to
10 come and explain to me what was missing on the thumb drive
11 was something that I wouldn't have been able to control
12 myself, so.

13 As simple as Mr. Frank is trying to represent it,
14 it's not that simple.

15 But nonetheless, Your Honor, I have enough now to
16 be able to make a determination as to what we're going to do
17 for suppression purposes and going forward.

18 MR. FRANK: And just to be clear, for the record,
19 Your Honor, I've advised Mr. LaRoche that he obviously
20 intends to file a suppression motion. If he does and if
21 we're required to respond to that, it is our intention not
22 to move for a third point off for timely acceptance of
23 responsibility. And so he's aware of that.

24 He's also aware that after the filing of the
25 suppression motion if he decides to proceed to trial, we're

1 likely to bring additional charges on top of the charges
2 that have already been filed.

3 THE COURT: So if it's any consolation, Mr.
4 LaRoche, this is just par for the course now.

5 MR. LaROCHE: Yes, Your Honor.

6 THE COURT: I hear it every day.

7 MR. LaROCHE: Yes, Your Honor.

8 THE COURT: It's not personal to your client.

9 MR. LaROCHE: That's correct.

10 THE COURT: Okay. So why don't we have a
11 final-final status on Tuesday, April 24, if the parties are
12 available. And if you want to phone in, that's fine.

13 MR. LaROCHE: Okay. I would like to, because I'm
14 actually starting a trial on the 26th.

15 THE COURT: Okay.

16 MR. LaROCHE: Circuit court in Maryland.

17 THE COURT: Well, let's have you appear by phone.

18 And how about -- could you do eleven o'clock in
19 the morning?

20 MR. LaROCHE: That's fine, Your Honor.

21 THE COURT: How about you, Mr. Frank?

22 MR. FRANK: I personally cannot, but I can have
23 somebody here.

24 THE COURT: Okay. You have someone here, and if
25 it turns out you can't find someone for that time, we'll

1 just change the time. That's fine.

2 And what I hope to do on that date is to send the
3 case up to Judge Burroughs. I will let her set the dates
4 for the motion to suppress, et cetera. So we'll send it up
5 for either Rule 11 or a pretrial conference, and you can
6 just let me know that.

7 And I can note in the report that I send to the
8 judge that you just recently got to look at the discovery,
9 and you can explain to her the situation. I'm sure she'll
10 take that into account with the scheduling.

11 MR. LaROCHE: Yes, Your Honor.

12 THE COURT: So anything else today, and do you
13 agree to exclude the time?

14 MR. LaROCHE: Yes, Your Honor. We would on behalf
15 of my client.

16 THE COURT: Okay. Anything else, Mr. Frank?

17 MR. FRANK: Nothing for the Government, Your
18 Honor.

19 THE COURT: Okay. All right. Thank you very much
20 then.

21 MR. FRANK: Thank you.

22 MR. LaROCHE: Thank you.

23 THE CLERK: Court's in recess.

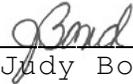
24 (Court adjourned at 2:27:08 p.m.)

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CERTIFICATION

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I, Judy Bond, a court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.


Judy Bond

April 7, 2018

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